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Dkt. 6845/59951-Z

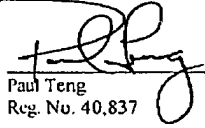
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Michael Tucci et al.

Application No.: 09/899,776

Date Filed: July 5, 2001

For: **CARBON FIBER ELECTRICAL CONTACTS FORMED OF COMPOSITE CARBON  
FIBER MATERIAL**

I hereby certify that this correspondence is being transmitted by facsimile transmission to the U.S. Patent and Trademark Office at (571) 273-8300.	
 Paul Teng Reg. No. 40,837	<b>June 28, 2010</b>  Date

30 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10112  
Tel.: (212) 278-0400Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(b)**

This Petition is submitted to revive the above-identified application under 37 C.F.R. §1.137(b).

Applicant received a Notice Of Abandonment dated February 9, 2004 from the United States Patent and Trademark Office (PTO) indicating that applicant failed to file a reply to a "Notice To File Missing Parts" (understood by undersigned to refer to Notice To File Corrected Application Papers – Filing Date Granted) mailed on August 24, 2001. A copy of the February 9, 2004 Notice Of Abandonment is attached as **Exhibit A** hereto.

A Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181(a) was filed with the Patent Office on March 3, 2004. On July 30, 2009, since a decision on the March 3, 2004

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Petition had not yet been received, a Status Inquiry was filed with the Patent Office.

A Decision On Petition dated April 26, 2010 was received from the Office of Petition of the Patent Office, dismissing the March 3, 2004 Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181(a). A copy of the April 26, 2010 Decision On Petition is attached as **Exhibit B** hereto.

A response to the April 26, 2010 Decision On Petition was due within two months of the April 26, 2010 Decision. However, since June 26, 2010 falls on a Saturday, a response is due the next business day which is not a Saturday, Sunday or Federal holiday. Accordingly, a response to the April 26, 2010 Decision On Petition is now due June 28, 2010 and this Petition under 37 C.F.R. §1.137(b), as a response to the April 26, 2010 Decision On Petition, is being timely filed.

#### Requirements of Petition to Revive

A petition under 37 C.F.R. §1.137(b) must be accompanied by:

- (1) the required reply, unless it has been previously filed;
- (2) the petition fee set forth in 37 C.F.R. §1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in §120(d)) required pursuant to 37 C.F.R. §1.137 (c) for a utility application filed before June 8, 1995.

This Petition is being submitted concurrently with a Response to August 24, 2001 Notice To File Corrected Application Papers including copy of August 24, 2001 Notice and five sheets of replacement drawings (attached as **Exhibit C** hereto). Accordingly, it is believed that the required reply is being submitted herewith.

The fee for a Petition under 37 C.F.R. §1.137(b) as set forth in 37 C.F.R. §1.17(m) is \$1,620.00. The April 26, 2010 Decision On Petition indicates that \$750.00 has already been charged

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to deposit account and can be applied as credit towards the fee required for the Petition under 37 C.F.R. §1.137(b). The Patent Office is hereby authorized to charge the \$870.00 balance (= \$1,620.00 - \$750.00) due for this Petition under 37 C.F.R. §1.137(b) to Deposit Account No. 03-3125.

The entire delay in filing the required reply, i.e. response to the August 24, 2001 Notice To File Corrected Application Papers, until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b), was unintentional.

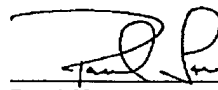
Because this application was filed after June 8, 1995, 37 C.F.R. §1.137(c) does not require any terminal disclaimer to be filed.

In view of the foregoing, applicant earnestly solicits an expeditious revival of the subject application.

If a telephone interview would be of assistance in resolving any issue in connection with this Petition, applicant's undersigned attorney invites the Examiner to telephone him at the number provided below.

If any additional fee is required in connection with the filing of this Petition, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



Paul Teng, Reg. No. 40,837  
Attorney for Applicant  
COOPER & DUNHAM LLP  
30 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10112  
Tel.: (212) 278-0400

# **EXHIBIT A**

to

**PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(b)**

(U.S. Application No. 09/899,776)

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JUN 28 2010



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1430  
Alexandria, Virginia 22313-1430  
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/899,776	07/05/2001	Michael Tucci	6845/59951-Z

Jay H. Maloli  
c/o COOPER & DUNHAM  
1185 Avenue of the Americas  
New York, NY 10036

CONFIRMATION NO. 2359

ABANDONMENT/TERMINATION  
LETTER

\*OC000000011859987\*

Date Mailed: 02/09/2004

## NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 08/24/2001.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

# **EXHIBIT B**

to

**PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(b)**

(U.S. Application No. 09/899,776)



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

COOPER & DUNHAM, LLP  
30 Rockefeller Plaza  
20th Floor  
NEW YORK NY 10112

MAILED

APR 26 2010

OFFICE OF PETITIONS

In re Application of  
Michael TUCCI et al. et al.  
Application No. 09/899,776  
Filed: July 5, 2001  
Attorney Docket No. 6845/59951-Z

DECISION ON PETITION

This is a decision on the petition, filed March 3, 2004, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application. The delay in rendering a decision on this petition is regretted.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notice to File Corrected Application Papers (Notice) mailed August 24, 2001, which set a two (2)-month shortened statutory period for reply. A Notice of Abandonment was mailed on February 9, 2004.

Petitioner asserts that the Notice dated August 24, 2001, was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

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2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy items (2) and (3) of the above-stated requirements in that the copy of the practitioner's record(s) required to show non-receipt of the Office action does not include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See MPEP § 711.03(c)(I)(A).

Accordingly, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$770 petition fee (\$1540 for a Large Entity). It is noted that the applicant has been charged \$750 as authorized in the petition. Should the applicant not elect to file a petition for revival under 37 CFR 1.137(b), the applicant may wish to request a refund of the \$750 fee. However, if the applicant wishes to file a petition under 37 CFR 1.137(b), the unpaid balance in the petition fee (\$20 in this instance) should be included with such a petition.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:



Application No. 09/899,776

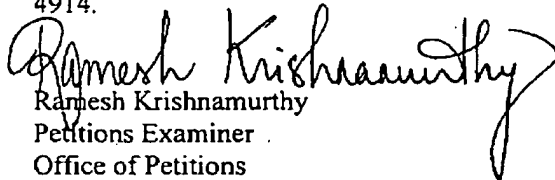
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By Mail: Mail Stop PETITION  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office  
Customer Service Window, Mail Stop Petitions  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

By facsimile: (571) 273-8300  
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4914.

  
Ramesh Krishnamurthy  
Petitions Examiner  
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally  
Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.

# EXHIBIT C

to

PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(b)

(U.S. Application No. 09/899,776)

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Michael Tucci et al.

Application No.: 09/899,776

Date Filed: July 5, 2001

For: CARBON FIBER ELECTRICAL CONTACTS FORMED OF COMPOSITE  
CARBON FIBER MATERIALCommissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

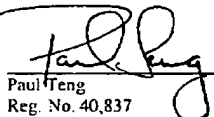
**RESPONSE TO AUGUST 24, 2001 NOTICE  
TO FILE CORRECTED APPLICATION PAPERS**

In response to a Notice To File Corrected Application Papers – Filing Date Granted, dated August 24, 2001 in connection with the above-identified application, applicant submits herewith (a) a copy of the August 24, 2001 Notice, and (b) five (5) replacement sheets of formal drawings for Figs. 1A-14, in compliance with 37 CFR 1.84. No new subject matter is introduced by the enclosed replacement drawings.

If any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

PAUL TENG, Reg. No. 40,837  
Attorney for Applicant  
COOPER & DUNHAM LLP  
30 Rockefeller Plaza, 20<sup>th</sup> Floor  
New York, New York 10112  
Tel.: (212) 278-0400

I hereby certify that this correspondence is being transmitted by facsimile transmission to the U.S. Patent and Trademark Office at (571) 273-8300.	
 Paul Teng Reg. No. 40,837	June 28, 2010 Date

